IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.24 OF 2006

IN

ARBITRATION PETITION NO.528 OF 2004

...

G.C.Countrywide Consumer
Financial Services Ltd. ...Petitioner

v/s.

Zahida Anis Palla & Anr. ...Respondents
... (Applicants)

Mr.P.R. Naidu for the Applicants/Respondents.
Mr.Tushar Bhavsar i/b Mohit Gadkari & Co. for the Petitioner.

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CORAM: D.K.DESHMUKH, J.

DATED: 15TH SEPTEMBER,2006

P.C.:

Following can be taken as admitted position for the purpose of deciding this Chamber Summons:

(i) That there are consent terms entered into between the parties dated 22-12-2004;

(ii) Those consent terms are binding on the Respondents, who have taken out this Chamber Summons;

(iii) The consent terms which are admittedly binding on the Respondents require the Respondents to pay amounts every month;

(iv) It is also an admitted position that the Respondents have committed default in payment of monthly installments;

(v) It is also an admitted position that the consequence of the Respondents committing default in payment of monthly installment is provided for in the consent terms itself;

2. By this Chamber Summons the Respondents seek an order from the Court condoning delay in payment of monthly installments. Therefore, the question that I have to consider, assuming for the present that the court has the power to condone the delay involved in making payment of monthly installments, whether the defaults committed by the Respondents can be condoned by the Court, because the Respondents have shown sufficient cause for the default.

3. It is also an admitted position that the Respondents have committed default in payment of monthly installments first in March, 2003, second in November, 2003, then entire year 2004, except the month of June, 2004, monthly installment of February, 2005 and monthly installments from April to June, 2005 and then monthly installments from the month of September, 2005 to December, 2005.

4. The present Chamber Summons has been taken out in the month of January, 2006. Perusal of the affidavit filed in support of the Chamber Summons shows that according to the Respondent No.2 he was admitted in hospital during the year 2004 and he was also unwell

in the month of March, 2005. Therefore, there is an attempt made to show cause for not paying monthly installments of the year 2004. So far as illness during the month of March 2005 is concerned, installment for the month of March, 2005 has in fact been paid, therefore, that illness is not relevant. Therefore, so far as affidavit filed in support of the Chamber summons is concerned, an attempt has been made to give explanation only for the defaults committed in payment of monthly installment of the year 2004. In that affidavit one does not find any explanation for default committed in payment of monthly installment of March, 2003, November, 2003 and in the months of the year 2005 which have been mentioned above. The learned Counsel appearing for the Respondents then relied on the affidavit of the Respondent No.2 dated 15th September, 2006. He relied on following statements in paragraph 11 of that affidavit.

> "I say that I had purchased the edible oils during the period 2003 after taking the loan and edible oil prices were fallen and suffered business loss due to this loss I had fallen ill."

Perusal of the above statement shows that because the Respondent had suffered business loss he could not pay the installment. In my opinion, however, this statement cannot be accepted. Because it is absolutely vague. No material is produced to establish that the Respondent No.2 was involved in any business, that he had undertaken any business in any edible oil. Therefore, no reliance can be placed on this statement. Then reliance was placed on a statement made in paragraph 21 of his affidavit where the Respondent No.2 states that he could not make payment due to loss of business and ill-health. Even accepting the submission that because the Respondent No.2 was ill during the year 2004, there is no explanation whatsoever given for nonpayment of installment of March, 2003 and November, 2003 and there is absolutely no explanation given for committing defaults in payment of installments of eight months in the year 2005. Assuming that the court has power to condone the delay, obviously that power has to be exercised by the court on the party showing sufficient cause and even assuming that the power of the court to condone the delay for sufficient cause is to be liberally exercised, it

goes without saying that if there is no cause shown, there is no question of condoning the delay. I have found that the Respondents have not shown any cause whatsoever for committing defaults in payment of installments during the year 2003, i.e. March, 2003, November, 2003 and for eight months in the year 2005. In the absence of any explanation given obviously the delay in payment of monthly installments cannot be condoned and therefore the Chamber Summons is disposed of.

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